

JAN 26 2009

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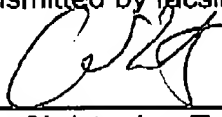
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Facsimile
404-653-6444DATE January 26, 2009TO

Firm: U.S. Patent and Trademark Office Fax No.: 571-273-8300

FROMName: Christopher T. Kent Phone No.: 404-653-6559
Fax # Verified by: S. R. Horton # Pages (incl. this): 14

Confirmation Copy to Follow: No

SUBJECT In re Patent of: James B. POPP et al.
U.S. Patent No. 7,456,750 B2
Issued: November 25, 2008
For: FIRE SUPPRESSION AND INDICATOR SYSTEM AND FIRE
DETECTION DEVICE
Attorney Docket No.: 2100.0071-00MESSAGECERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. § 1.8I hereby certify that this correspondence is being transmitted by facsimile to the U.S.
Patent and Trademark Office on January 26, 2009.By: 
Christopher T. Kent
Reg. No. 48,216

- Attached:
- 1) Request for Reconsideration of Patent Term Adjustment Under 37 C.F.R. § 1.705(d) (5 pages); and
 - 2) Copy of USPTO Pair page Patent Term Adjustment tab (3 pages); and
 - 3) Copy of courtesy copy of originally-filed Declaration and USPTO dated-stamped postcard receipt submitted to Examiner (5 pages).

If there is a problem with this transmission, notify fax room at (404) 653-6462 or the sender at the number above.

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PATENT
Attorney Docket No. 2100.0071-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:)
)
James B. POPP et al.)
)
Patent No.: 7,456,750 B2)
)
Issued: November 25, 2008)
)
For: FIRE SUPPRESSION AND)
INDICATOR SYSTEM AND FIRE)
DETECTION DEVICE)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

VIA FACSIMILE

Sir:

**REQUEST FOR RECONSIDERATION
OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)**

In accordance with 37 C.F.R. § 1.705, Patentee hereby requests reconsideration of the patent term adjustment under 35 U.S.C. § 154(b) of 169 days determined by the U.S. Patent and Trademark Office for the above-referenced patent ("the '750 patent"). This request is being filed within two months of issuance of the '750 patent (January 25, 2009, being a Sunday), as required by 37 C.F.R. § 1.705(d), along with a fee payment under 37 C.F.R. § 1.705(b)(1).

I. Statement of the Facts

A. Correct Patent Term Adjustment

According to information printed on the face of the '750 patent, the USPTO has determined that it is entitled to 169 days of patent term adjustment.

01/27/2009 HHARZ12 00000006 060916 7456750

01 FC:1455 200.00 DA

U.S. Patent No. 7,456,750 B2
Inventors: James B. POPP et al.
Attorney Docket No. 2100-0071-00
Request for Reconsideration of Patent Term Adjustment

Patentee believes the USPTO's determination is incorrect, and Patentee respectfully submits that the correct patent term adjustment for the '750 patent is 637 days based on the following facts:

B. Improper Reduction of Patent Term Adjustment

The Determination of Patent Term Adjustment ("Determination") issued along with the Notice of Allowance mailed on July 23, 2008, indicated that the patent issuing as the '750 patent would be eligible for a patent term adjustment of 272 days.

The Issue Notification mailed November 5, 2008, indicated that the '750 patent would be eligible to receive a patent term adjustment of 169 days rather than the 272 days indicated on the Determination, a reduction of 103 days.

According to the USPTO's PAIR page Patent Term Adjustment tab (copy of print-out attached), the USPTO reduced the patent term adjustment shown in the Determination based on Patentee's submission of a courtesy copy of the Declaration and Power of Attorney originally filed on June 23, 2001 (copy attached along with USPTO dated-stamped postcard receipt).

Patentee filed the courtesy copy of the Declaration and Power of Attorney in response to an express request by the Examiner to submit a copy of the originally-filed Declaration and Power of Attorney because the USPTO's copy was apparently no longer present in the USPTO's application file.

The USPTO has apparently improperly viewed the submission of the courtesy copy as a "fail[ure] to engage[]" in reasonable efforts to conclude prosecution . . . of the application," and has reduced the patent term adjustment by 103 days. See 37 C.F.R.

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§ 1.704(a).

Patentee respectfully submits that such a reduction is improper because a supplemental paper submitted in response to an Examiner's express request does not constitute a failure to engage in reasonable prosecution efforts. See 37 C.F.R.

§ 1.704(c)(8) (indicating that supplemental replies and other papers expressly requested by the Examiner do not trigger a reduction in patent term adjustment).

Thus, reduction by 103 days of the '750 patent's patent term adjustment from 272 days indicated in the Determination to 169 days based on Patentee's submission of a courtesy copy of the Declaration and Power of Attorney, as expressly requested by the Examiner, is improper and should be reversed.

After reversal of the improper reduction of 103 days, the patent term adjustment should be returned to 272 days, plus the additional patent term adjustment acquired by the '750 patent noted below.

C. Pendency Greater than Three Years based on Wyeth v. Dudas

A recent decision by the U.S. District Court for the District of Columbia, Wyeth v. Dudas, Civ. Act. No. 07-1492 (D.D.C. 2008), found that the USPTO has been improperly calculating patent term adjustment in such a manner as to improperly discount patent term adjustment accruing as a result of an application pending for more than three years.

According to Wyeth, the time period beyond three years of pendency of an application counts toward patent term adjustment for every day that does not occur on the same day as a USPTO delay based on a reason other than the pendency being

U.S. Patent No. 7,456,750 B2
Inventors: James B. POPP et al.
Attorney Docket No. 2100-0071-00
Request for Reconsideration of Patent Term Adjustment

greater than three years. See Wyeth at 8 ("the only way that periods of time can 'overlap' is if they occur on the same day").

Patentee respectfully submits that the USPTO has failed to provide the '750 patent with 365 days of accrued patent term adjustment based on the period of time between three years after the filing date and the date on which Patentee filed a Request for Continued Examination (RCE).

The application that matured into the '750 patent ("the application") was filed on April 19, 2001.

The application had been pending for three years as of April 19, 2004.

Patentee filed an RCE on April 19, 2005, which was the first and only RCE filed in the application.

Thus, the application was pending for 365 days more than three years before Patentee filed an RCE, more specifically the time period between April 19, 2004, and April 19, 2005.

Thus, the '750 patent should receive 365 days of additional patent term adjustment based on Wyeth.

D. Total Patent Term Adjustment

For the reasons outlined above, Patentee respectfully submits that the '750 patent is eligible to receive a total patent term adjustment of 637 days, and thus, Patentee respectfully requests reconsideration of the patent term adjustment and indication that the '750 patent will be eligible to receive 637 days of patent term adjustment.

U.S. Patent No. 7,456,750 B2
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E. Terminal Disclaimer

The '750 patent is not subject to a Terminal Disclaimer.

F. Reasonable Efforts

There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing of examination of the above-identified application, as set forth in 37 C.F.R. § 1.704, other than those noted in the attached print-out of the Patent Term Adjustment tab (not including the erroneous 103-day delay noted above in part B of this Request).

II. Fee Payment

Please charge the \$200.00 fee payment required by 37 C.F.R. § 1.705(b)(1) for filing this Request to Deposit Account 06-0916. Further, please grant any extensions to time to consider this Request and charge any deficiencies in the fee payment to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: January 26, 2009

By: 

Christopher T. Kent
Reg. No. 48,216

Attachments: Copy of USPTO PAIR page Patent Term Adjustment tab (3 pages)
Copy of courtesy copy of originally-filed Declaration and USPTO dated-stamped postcard receipt submitted to Examiner (5 pages)

JAN 26 2009

09/837,228	FIRE SUPPRESSION AND INDICATOR SYSTEM AND FIRE DETECTION DEVICE	01-26-2009:09:03:28
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Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 09/837,228

Filing or 371(c) Date:	04-19-2001	USPTO Delay (PTO) Delay (days):	669
Issue Date of Patent:	11-25-2008	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	500
Post-Issue Petitions (days):	+0	Total PTA (days):	169
USPTO Adjustment(days):	+0	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
11-05-2008	PTA 36 Months		
11-25-2008	Patent Issue Date Used in PTA Calculation		
10-24-2008	Dispatch to FDC		
10-24-2008	Application Is Considered Ready for Issue		
10-20-2008	Issue Fee Payment Verified		
10-20-2008	Issue Fee Payment Received		
08-15-2008	Supplemental Papers - Oath or Declaration		103
08-15-2008	TC Return to Pubs		↑
08-04-2008	Pubs Case Remand to TC		↑
07-30-2008	Receipt into Pubs		↑
07-23-2008	Mail Notice of Allowance		↑
07-23-2008	Document Verification		↑
07-23-2008	Examiner's Amendment Communication		↑
07-18-2008	Mail BOA miscellaneous communication to applicant		↑
07-18-2008	BOA miscellaneous communication to applicant		↑
07-16-2008	Notice of Allowance Data Verification Completed		↑
04-29-2008	Mail BPAI Decision on Appeal - Affirmed In Part	643	
04-29-2008	BPAI Decision - Examiner Affirmed In Part	↑	
03-13-2008	Confirmation of Hearing by Appellant	↑	
02-28-2008	Notification of Appeal Hearing	↑	
01-04-2008	Docketing Notice Mailed to Appellant	↑	
01-02-2008	Assignment of Appeal Number	↑	
12-05-2007	Appeal Awaiting BPAI Docketing	↑	
09-27-2007	Mail Reply Brief Noted by Examiner	↑	
09-26-2007	Reply Brief Noted by Examiner	↑	
06-21-2007	Order Returning Undocketed Appeal to the Examiner	↑	
06-04-2007	Appeal Awaiting BPAI Docketing	↑	
03-14-2007	Mail Reply Brief Noted by Examiner	↑	
03-09-2007	Reply Brief Noted by Examiner	↑	
01-20-2007	Exam. Ans. Review Complete	↑	
01-16-2007	Request for Oral Hearing	↑	

01-20-2007	Date Forwarded to Examiner	↑	
01-16-2007	Reply Brief Filed	↑	
11-15-2006	Mail Examiner's Answer	↑	
11-13-2006	Examiner's Answer to Appeal Brief	↑	
10-11-2006	Appeal Brief Review Complete	↑	
10-11-2006	Date Forwarded to Examiner	↑	
10-02-2006	Appeal Brief Filed	↑	
09-01-2006	Mail Appeals conf. Proceed to BPAI	↑	
08-31-2006	Pre-Appeals Conference Decision - Proceed to BPAI	↑	
07-27-2006	Request for Pre-Appeal Conference Filed	↑	
07-27-2006	Notice of Appeal Filed		36
07-27-2006	Request for Extension of Time - Granted	↑	
03-21-2006	Case Docketed to Examiner in GAU	↑	
03-21-2006	Mail Final Rejection (PTOL - 326)	↑	
03-17-2006	Final Rejection		
01-06-2006	IFW TSS Processing by Tech Center Complete		
01-06-2006	Date Forwarded to Examiner		
12-28-2005	Response after Non-Final Action		91
12-28-2005	Request for Extension of Time - Granted	↑	
02-03-2003	Reference capture on IDS	↑	
11-16-2005	Examiner Interview Summary Record (PTOL - #13)	↑	
06-28-2005	Mail Non-Final Rejection	↑	
06-25-2005	Non-Final Rejection		
04-19-2005	Reference capture on IDS		
04-19-2005	Information Disclosure Statement (IDS) Filed		
04-19-2005	Information Disclosure Statement (IDS) Filed		
04-23-2005	Date Forwarded to Examiner		
04-23-2005	Date Forwarded to Examiner		
04-19-2005	Request for Continued Examination (RCE)		59
04-23-2005	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)	↑	
04-19-2005	Workflow - Request for RCE - Begin	↑	
11-19-2004	Mail Final Rejection (PTOL - 326)	↑	
11-15-2004	Final Rejection		
09-07-2004	Date Forwarded to Examiner		
07-29-2004	Response after Non-Final Action		90
07-29-2004	Request for Extension of Time - Granted	↑	
07-29-2004	Workflow incoming amendment IFW	↑	
01-30-2004	Mail Non-Final Rejection	↑	
01-26-2004	Non-Final Rejection		
01-14-2004	Case Docketed to Examiner in GAU		
11-14-2003	Date Forwarded to Examiner		

11-05-2003	Response after Non-Final Action	90
11-05-2003	Request for Extension of Time - Granted	⬆
08-15-2003	Power to Make Copies and/or Inspect	⬆
08-12-2003	Power to Make Copies and/or Inspect	⬆
05-07-2003	Mail Non-Final Rejection	⬆
05-05-2003	Non-Final Rejection	
02-03-2003	Information Disclosure Statement (IDS) Filed	
02-03-2003	Information Disclosure Statement (IDS) Filed	
02-12-2003	Date Forwarded to Examiner	
02-03-2003	Response after Non-Final Action	31
02-03-2003	Request for Extension of Time - Granted	⬆
10-03-2002	Mail Non-Final Rejection	⬆
10-01-2002	Non-Final Rejection	
08-20-2002	Date Forwarded to Examiner	
08-15-2002	Response to Election / Restriction Filed	
07-15-2002	Mail Restriction Requirement	26
07-15-2002	Requirement for Restriction / Election	⬆
11-08-2001	Case Docketed to Examiner in GAU	⬆
09-14-2001	Application Dispatched from OIPE	⬆
06-13-2001	Application Is Now Complete	⬆
06-13-2001	Notice Mailed--Application Incomplete--Filing Date Assigned	⬆
06-12-2001	Correspondence Address Change	⬆
04-28-2001	IFW Scan & PACR Auto Security Review	⬆
04-19-2001	Initial Exam Team ng	⬆

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SER.# : 000005070810

DATE, TIME
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DATE August 15, 2008

TO

Firm: U.S. Patent and Trademark Office **Fax No.:** 571-273-8330
Examiner Benjamin C. Lee

FROM

Name: Christopher T. Kent **Phone No.:** 404-653-6559
Fax # Verified by: S. R. Horton **# Pages (incl. this):** 4

Confirmation Copy to Follow: No

SUBJECT

In re Application of: James B. POPP et al.

Application No.: 09/837,228

Filed: April 19, 2001

For: FIRE SUPPRESSION AND INDICATOR SYSTEM AND FIRE
DETECTION DEVICE

Attorney Docket No.: 02100.0071-00

JAN 26 2009

FINNEGAN

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP
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404-653-6444**DATE** August 15, 2008**TO****Firm:** U.S. Patent and Trademark Office **Fax No.:** 571-273-8330
Examiner Benjamin C. Lee**FROM****Name:** Christopher T. Kent **Phone No.:** 404-653-6559
Fax # Verified by: S. R. Horton **# Pages (incl. this):** 4**Confirmation Copy to Follow: No****SUBJECT**In re Application of: James B. POPP et al.
Application No.: 09/837,228
Filed: April 19, 2001
For: FIRE SUPPRESSION AND INDICATOR SYSTEM AND FIRE
DETECTION DEVICE
Attorney Docket No.: 02100.0071-00**MESSAGE****CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. § 1.8**I hereby certify that this correspondence is being transmitted by facsimile to the U.S.
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Reg. No. 48,216

- Attached:
- 1) Copy of Stamped Postcard for as-filed Declaration and Power of Attorney (1 page);
and
 - 2) Copy of as-filed Declaration and Power of Attorney (2 pages).

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RLS/CDW

PLEASE STAMP TO ACKNOWLEDGE RECEIPT OF THE FOLLOWING:

In Re Application of: James B. POPP et al.

Serial No. 09/837,228

Group Art Unit: 2632

Filed: April 19, 2001

Examiner: Unassigned

For: FIRE SUPPRESSION AND INDICATOR SYSTEM AND FIRE DETECTION DEVICE

1. Response to Notice to File Missing Parts of Application
2. Copy of Notice to File Missing Parts of Nonprovisional Application
3. Declaration and Power of Attorney
4. Check for \$130.00

JUL 23 2001

Dated: July 23, 2001

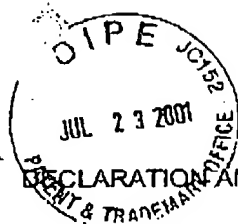
Docket No.: 02100.0071-00

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Customer Number 22,852
Key Docket No. 02100.0071

DECLARATION AND POWER OF ATTORNEY

As a below named inventor, I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; I believe I am the original, first, and sole inventor (if only one name is listed below) or an original, first, and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: FIRE SUPPRESSION AND INDICATOR SYSTEM AND FIRE DETECTION DEVICE the specification of which ☐ is attached and/or ☒ was filed on April 19, 2001 as United States Application Serial No. 09/837,228.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above. I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR § 1.56.

I hereby claim foreign priority benefits under 35 U.S.C. § 119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate or § 365(a) of any PCT International application(s) designating at least one country other than the United States, listed below and have also identified below, any foreign application(s) for patent or inventor's certificate, or any PCT International application(s) having a filing date before that of the application(s) of which priority is claimed:

Country	Application Number	Date of Filing	Priority Claimed Under 35 U.S.C. 119
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO

I hereby claim the benefit under 35 U.S.C. § 119(e) of any United States provisional application(s) listed below:

Application Number	Date of Filing
60/198,319	April 19, 2000

I hereby claim the benefit under 35 U.S.C. § 120 of any United States application(s) or § 365(c) of any PCT International application(s) designating the United States, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application(s) in the manner provided by the first paragraph of 35 U.S.C. § 112, I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR § 1.56 which became available between the filing date of the prior application(s) and the national or PCT International filing date of this application:


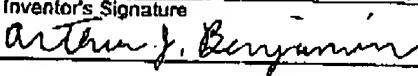
Application Number	Date of Filing	Status (Patented, Pending, Abandoned)

I hereby appoint the following attorney and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith: FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P., CUSTOMER NUMBER 22,852, Douglas B. Henderson, Reg. No. 20,291; Ford F. Farabow, Jr., Reg. No. 20,630; Arthur S. Garrett, Reg. No. 20,338; Donald R. Dunner, Reg. No. 19,073; Brian G. Brunsvold, Reg. No. 22,593; Tipton D. Jennings, IV, Reg. No. 20,645; Jerry D. Voight, Reg. No. 23,020; Laurence R. Hefter, Reg. No. 20,827; Kenneth E. Payne, Reg. No. 23,098; Herbert H. Mintz, Reg. No. 26,691; C. Larry O'Rourke, Reg. No. 26,014; Albert J. Santorelli, Reg. No. 22,610; Michael C. Elmor, Reg. No. 25,857; Richard H. Smith, Reg. No. 20,609; Stephen L. Peterson, Reg. No. 26,325; John M. Romary, Reg. No. 26,331; Bruce C. Zolter, Reg. No. 27,680; Dennis P. O'Reilly, Reg. No. 27,932; Allen M. Sokal, Reg. No. 26,695; Robert D. Bajelsky, Reg. No. 25,387; Richard L. Stroup, Reg. No. 28,478; David W. Hill, Reg. No. 28,220; Thomas L. Irving, Reg. No. 28,619; Charles E. Upsey, Reg. No. 28,165; Thomas W. Windland, Reg. No. 27,605; Basil J. Lewis, Reg. No. 28,818; Martin I. Fuchs, Reg. No. 28,508; E. Robert Yoches, Reg. No. 30,120; Barry W. Graham, Reg. No. 29,924; Susan Haberman Griffen, Reg. No. 30,907; Richard B. Racine, Reg. No. 30,415; Thomas H. Jenkins, Reg. No. 30,857; Robert E. Converse, Jr., Reg. No. 27,432; Clair X. Mullen, Jr., Reg. No. 20,348; Christopher P. Foley, Reg. No. 31,354; John C. Paul, Reg. No. 30,413; Roger D. Taylor, Reg. No. 28,992; David M. Kelly, Reg. No. 30,953; Kenneth J. Meyers, Reg. No. 25,148; Carol P. Einaudi, Reg. No. 32,220; Walter Y. Boyd, Jr., Reg. No. 31,738; Steven M. Anzalone, Reg. No. 32,095; Jean B. Fordis, Reg. No. 32,984; Barbara C. McCurdy, Reg. No. 32,120; James K. Hammond, Reg. No. 31,964; Richard V. Burgulian, Reg. No. 31,744; J. Michael Jakes, Reg. No. 32,824; Thomas W. Banks, Reg. No. 32,719; Christopher P. Isaac, Reg. No. 32,816; Bryan C. Diner, Reg. No. 32,409; M. Paul Barker, Reg. No. 32,013; Andrew Chanho Sonu, Reg. No. 33,457; David S. Forman, Reg. No. 33,694; Vincent P. Kovalick, Reg. No. 32,867; James W. Edmondson, Reg. No. 33,871; Michael R. McGurk, Reg. No. 32,045; Joann M. Neth, Reg. No. 36,363; Gerson S. Panitch, Reg. No. 33,751; Cheri M. Taylor, Reg. No. 33,216; Charles E. Van Horn, Reg. No. 40,268; Linda A. Wadler, Reg. No. 33,218; Jeffrey A. Berkowitz, Reg. No. 36,743; Michael R. Kelly, Reg. No. 33,921; James B. Monroe, Reg. No. 33,971; Doris Johnson Hines, Reg. No. 34,629; Allen R. Jensen, Reg. No. 28,224; Lori Ann Johnson, Reg. No. 34,498; David A. Manspeizer, Reg. No. 37,540 and Robert F. Ziems, Reg. No. 18,906. Please address all correspondence to FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P. 1300 I Street, N.W., Washington, D.C. 20005, Telephone No. (202) 408-4000.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Listing of Inventors Continued From Page 1 heretofore

Attorney Docket No. 02100.0071

Full Name of First Inventor James B. Popp	Inventor's Signature 	Date 7/11/2001
Residence 7973 GERMAN TOWN Rd Post Office Address Olive Branch MS 38654		Citizenship US
Full Name of Second Inventor Arthur J. Benjamin	Inventor's Signature 	Date 7/11/2001
Residence 2562 MEADOW RUN, GERMANTOWN TN, 38138 Post Office Address		Citizenship U.S.